

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

NEIL W. SIMONSON

Bky Case No 04-61018 DDO
Chapter 13

Debtor(s)

OBJECTION TO CONFIRMATION OF PLAN

TO: All parties in interest under Local Rule 9013-3.

1. I, Michael J. Farrell, am the standing trustee assigned to the above-mentioned case.
2. A confirmation hearing has been set for 10:00 a.m. on October 26, 2004 in Courtroom 2 – 2nd Floor, 118 South Mill Street, Fergus Falls, Minnesota, 56537.
3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on October 21, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is seven days prior to the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. The Court has jurisdiction pursuant to 28 U.S.C. § § 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on August 27, 2004. This case is now pending in this Court.
5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the debtors' proposed Chapter 13 Plan filed on April 12, 2004 (the "Plan").
6. The Debtor is a self-employed attorney with offices in Morris and Wheaton. Although filing alone, he has a wife who works in the post office at the University of Minnesota – Morris with an income of approximately \$26,000.00 per year. He lists his gross income at \$1500.00 per month. His Schedule I reflects that there is a combined net \$2557.00 per month. His Schedule J shows living expenses of \$2307.00, which includes \$860.00 for business expenses such as rent and telephone. The net business income is \$340.00 per month. This leaves a plan surplus of \$250.00.

He lists assets of a home valued at \$75,000.00 with no debt, a vehicle, an IRA, a PERA, and some Vanguard funds in addition to household goods and clothing. The analysis shows approximately \$9725.00 worth of non-exempt property,

although, an exemption has been claimed on a vehicle that is over and above that allowed and will be objection to. The Plan proposes to pay \$7750.00 to the unsecured creditors, including trustee's fees. The Plan does not meet the "best interests of creditors" test of 11 U.S.C. § 1325(a)(4), in that the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is less than the amount that would be paid on such claim if the estate of the debtor was liquidated under Chapter 7 of Title 11 on such date.

7. The Debtor anticipates that his income will steadily increase as he re-establishes his practice after his relatively recent relocation to Morris. Therefore, the Trustee objections to the proposed plan in that it does not specifically state that all additional disposable income will be made available to the benefit of the unsecured creditors for the first three years of the Plan.

Therefore, the trustee requests that the proposed plan be denied and any other action the court deems fit.

Dated October 12, 2004

/s/ Michael J. Farrell

Michael J. Farrell, Trustee

Box 519

Barnesville, MN 56514

(218) 354-7356

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

NEIL W. SIMONSON

Bky Case No 04-61018 DDO
Chapter 13

Debtor(s).

The undersigned, being an employee of the standing Chapter 13 Trustee, declares that on the date indicated below, I served the following:

Notice of Trustee's Objection to Confirmation of Plan
and Unsworn Declaration of Proof of Service

Upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at Barnesville, Minnesota, addressed to each of them as follows:

Debtor(s):

Neil W. Simonson
PO Box 653
Morris, MN 56267

Debtor's Attorney:

Ian T. Ball
12 S. 6th St., Suite 326
Minneapolis, MN 55402

Additional Copy(s) addressed to:

United States Trustee
1015 U.S. Courthouse
300 W. 4th St.
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 12, 2004

/s/ Belinda D. Kurtz
Belinda D. Kurtz
Chapter 13 Office

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

NEIL W. SIMONSON

Bky Case No 04-61018 DDO
Chapter 13

Debtor(s)

This matter came before the Court on October 26, 2004 at 10:00 a.m., or as soon thereafter as could be heard on Confirmation of Debtor's Chapter 13 Plan. The appearances are as noted on the record. The court made its findings and conclusion on the record. Based on the Local and Federal Rules of Bankruptcy Procedure, it is

HEREBY ORDERED:

Confirmation of Debtor's Chapter 13 Plan is DENIED.

Dated: _____

Dennis D. O'Brien
U.S. Bankruptcy Judge